

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL RODMAN, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

SAFEWAY, INC.,

Defendant.

No.: CV-11-03003-JST (JCS)

**[PROPOSED] ORDER GRANTING IN  
PART AND DENYING IN PART  
PLAINTIFF'S ADMINISTRATIVE  
MOTION RE SEALING OF  
DOCUMENTS PURSUANT TO CIV.L.R.  
7-11 AND 79-5 [FOR PLAINTIFF'S  
MOTION FOR DISCOVERY  
SANCTIONS] (DOCKET 433)**

Date: June 16 2016

Time: 2:00 p.m.

Crtrm.: 9 – 19th Floor

Trial Date: October 5, 2015

Judge: Hon. Jon S. Tigar

Complaint filed: June 17, 2011

1 Plaintiff moves to file under seal numerous documents related to its Motion for  
 2 Sanctions, and both parties have filed declarations in support of sealing. [ECF No. 433;  
 3 Declaration of Timothy Matthews, ECF No. 433-1; Declaration of Michael McCready  
 4 ("McCready Declaration")]. Based on the motion, declarations, the record and file in this case,  
 5 and good cause having been shown pursuant to Civil L.R. 79.5 for the sealing of certain  
 6 materials, Plaintiff's Administrative Motion Re Sealing Of Documents Pursuant To Civ. L.R. 7-  
 7 11 And 79-5 [For Plaintiff's Motion for Discovery Sanctions] is hereby **GRANTED IN PART**  
 8 **and DENIED IN PART.**

### 9 I. LEGAL STANDARD

10 A party seeking to seal a document filed with the court must (1) comply with Civil Local  
 11 Rule 79-5; and (2) rebut the "a strong presumption in favor of access" that applies to all  
 12 documents other than grand jury transcripts or pre-indictment warrant materials. *Kamakana v.*  
 13 *City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citation and internal  
 14 quotation marks omitted). With respect to the first prong, Local Rule 79-5 requires, as a  
 15 threshold, a request that (1) establishes that the document, or portions thereof, are privileged,  
 16 protectable as a trade secret or otherwise entitled to protection under the law; and (2) is  
 17 "narrowly tailored to seek sealing only of sealable material." Civil L.R. 79-5(b).

18 With respect to the second prong, the showing required for overcoming the strong  
 19 presumption of access depends on the type of motion to which the document is attached. When a  
 20 party seeks to file materials in connection with a dispositive motion, the presumption can be  
 21 overcome only if the party presents "compelling reasons supported by specific factual findings  
 22 that outweigh the general history of access and the public policies favoring disclosure."  
 23 *Kamakana*, 447 F.3d 1172 at 1178-79 (internal citation omitted). "The mere fact that the  
 24 production of records may lead to a litigant's embarrassment, incrimination, or exposure to  
 25 further litigation will not, without more, compel the court to seal its records." *Id.* at 1179.

26 On the other hand, when a party seeks to file materials in connection with a non-  
 27 dispositive motion, the sealing party need not meet the 'compelling reasons' standard "because  
 28 those documents are often unrelated, or only tangentially related, to the underlying cause of

1 action." *Id.* at 1179 (citation and internal quotation marks omitted). In that case, a party need  
2 only make a "particularized showing under the good cause standard of Rule 26(c)" to justify the  
3 sealing of the materials. *Id.* at 1180 (internal citation and internal quotation marks omitted). A  
4 court may, for good cause, keep documents confidential "to protect a party or person from  
5 annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c).

6 A district court must "articulate [the] . . . reasoning or findings underlying its decision to  
7 seal." *Apple Inc. v. Psystar Corp.*, 658 F.3d 1150, 1162 (9th Cir. 2011) *cert. denied*, 132 S. Ct.  
8 2374 (U.S. 2012).

## 9 II. ANALYSIS

10 The "good cause" standard applies to sealing papers related to Plaintiff's non-dispositive  
11 Motion for Sanctions. [ECF No. 434]. For reasons described in the Plaintiff's motion to seal  
12 and supporting papers, and the McCready Declaration, the Court agrees that most of the  
13 materials proposed to be sealed constitute or contain valuable internal information not otherwise  
14 made available to the public regarding Safeway.com's competitively-sensitive pricing, internal  
15 business and online promotion practices and strategies, and source code, and Plaintiff's billing  
16 and detailed time entry records. The Court further agrees with the parties that exposing such  
17 information could subject the parties to "undue burden or expense," and that such information is  
18 therefore sealable. Fed. R. Civ. P. 26(c).

19 There are, however, several exhibits identified by Plaintiff as potentially containing  
20 Safeway-related confidential information that Safeway has confirmed are not, in fact, sealable or  
21 that need only be redacted to protect sealable information. This Motion is denied as to those  
22 exhibits and portions of exhibits. Specifically, the table below identifies the materials that shall  
23 be sealed, and the materials and information which shall not be sealed, from the Declaration of  
24 Steven A. Schwartz in Support of Plaintiff's Motion for Discovery Sanctions ("Schwartz  
25 Declaration") and from the Declaration of James C. Shah in Support of Plaintiff's Motion for  
26 Discovery Sanctions ("Shah Declaration"), all of which are attached to the supporting  
27 Declaration of Timothy N. Mathews. This Motion is Granted in Part and Denied in Part, as  
28 follows:

<b>Schwartz Declaration Exhibits</b>	<b>Sealed / Not Sealed</b>
Exh. 2	Granted as to Portions: Redactions as proposed by Defendant.
Exh. 3	Denied. Not Sealed
Exh. 4	Denied. Not Sealed
Exh. 5	Denied. Not sealed
Exh. 7	Granted. Sealed in its entirety
Exh. 8	Granted. Sealed in its entirety
Exh. 9	Granted. Sealed in its entirety
Exh. 10	Granted. Sealed in its entirety
Exh. 11	Granted. Sealed in its entirety
Exh. 12	Granted. Sealed in its entirety
Exh. 13	Granted. Sealed in its entirety
Exh. 14	Granted. Sealed in its entirety
Exh. 15	Denied. Not Sealed
Exh. 16	Denied. Not Sealed
Exh. 17	Denied. Not Sealed
Exh. 19	Denied. Not Sealed
Exh. 21	Denied. Not Sealed
Exh. 23	Granted. Sealed in its entirety
Exh. 24	Granted. Sealed in its entirety
Exh. 27	Granted. Sealed in its entirety
Exh. 28	Denied. Not Sealed
Exh. 29	Granted as to Portions: Redactions as proposed by Defendant.
Exh. 30	Denied. Not Sealed

Exh. 32	Granted. Sealed in its entirety
Exh. 33	Granted. Sealed in its entirety
Exh. 34	Granted. Sealed in its entirety
Exh. 35	Granted. Sealed in its entirety
Exh. 36	Granted. Sealed in its entirety

<b>Shaw Declaration Exhibits</b>	<b>Sealed / Not Sealed</b>
Exh. 3	Granted. Sealed in its entirety
Exh. 4	Granted. Sealed in its entirety
Exh. 5	Granted. Sealed in its entirety

**IT IS SO ORDERED.**

DATED:

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Jon S. Tigar  
United States District Judge